PEMUNGUT DUTI SETEM
v. ANN JOO INTEGRATED STEEL SDN BHD

COURT OF APPEAL, PUTRAJAYA
AZIZAH NAWAWI JCA
SEE MEE CHUN JCA
CHOO KAH SING JCA
[CIVIL APPEAL NO: W-01(A)-227-04-2022]
13 NOVEMBER 2024

Abstract – *To qualify for a stamp duty remission, pursuant to item 22(1)(b) of the First Schedule of the Stamp Act 1949, a loan agreement or instrument must meet the following criteria: (i) it must be a loan agreement or loan instrument; (ii) the loan must not have a definite and certain period, and the total amount ultimately payable must not be ascertainable; (iii) the loan must be unsecured; and (iv) the loan must be repayable on demand or in a single bullet payment. In this case, the court determined that the impugned instrument, which provided for various credit facilities, did not meet the criteria of item 22(1)(a) as it lacked a definite and certain period and an ascertainable total amount payable. Consequently, it fell under item 22(1)(b) and was eligible for the stamp duty remission.*

REVENUE LAW: *Stamp duty – Remission – Banking credit facilities – Credit facilities comprised various trade facilities – Whether bank's customer entitled to benefit from Stamp Duty (Remission) (No. 2) Order 2012 ('remission order') for remission of stamp duty payable under item 22(1)(b) of First Schedule of Stamp Act 1949 ('Act') – Whether amount of stamp duty payable fell under item 22(1)(a), instead of 22(1)(b) of First Schedule of Act – Whether remission order applicable – Amount entitled to be refunded under remission order*

By way of a letter of offer ('impugned instrument') issued by Alliance Bank Malaysia Bhd ('bank') to the respondent, the bank offered various credit facilities to the respondent and the respondent agreed to accept the same. The various credit facilities comprised various trade facilities up to the limit of RM100 million in the forms of letter of credit, trust receipt, foreign currency trust receipt, bankers acceptance and foreign currency promissory notes ('trade facilities') and the facility of forward foreign exchange up to the limit of RM5 million ('Forex'). Hence, the total credit facilities offered in the impugned instrument was up to the limit of RM105 million ('credit facilities amount'). The respondent asserted that it was entitled to benefit from the Stamp Duty (Remission) (No. 2) Order 2012 ('remission order') for a remission of the stamp duty payable under item 22(1)(b) of the First Schedule of the Stamp Act 1949 ('Act'). The appellant, the Collector of Stamp Duties ('Collector'), disagreed with the respondent's assertion and was of the

opinion that the amount of stamp duty payable fell under item 22(1)(a), instead of 22(1)(b) of the First Schedule of the Act, and that the stamp duty payable was RM525,000. The Collector also disagreed with the respondent that the remission order was applicable to the respondent and, as such, the respondent could not rely on the remission order to seek for the refund of the stamp duty already paid. The respondent filed an appeal to the High Court by way of case stated, pursuant to s. 39(1) of the Act. The High Court Judge ('HCJ') held that: (i) the Collector's reliance on the stamp duty payable under item 22(1)(a) of the First Schedule of the Act, which referred to the same *ad valorem* duty as a charge or mortgage, was incorrect and wrong in law; and (ii) the impugned instrument was qualified to be an instrument that fell within item 22(1)(b) of the First Schedule of the Act. Therefore, the remission order was applicable to the respondent and the respondent was entitled to seek for a refund based on the remission order from the amount which it had already paid for the stamp duty. Hence, the present appeal. The questions that arose for determination were: (i) whether the impugned instrument could qualify to be an instrument as described in item 22(1)(b) of the First Schedule of the Act; (ii) whether the remission order was applicable; and (iii) what was the amount entitled to be refunded under the remission order.

Held (allowing appeal in part):
Per Choo Kah Sing JCA delivering the judgment of the court:

(1) The credit facilities amount was set at a limit up to the amount of RM105 million. Although the impugned instrument had allocated a fixed credit amount (loan amount) available for each specific credit facility, that credit amount was not necessarily the loan amount, but a credit limit for which the respondent could utilise up to that specific amount. It was up to the respondent to decide how much and when to take up the available credit amount. Although there was a clause which required the respondent to maintain a trade utilisation of 70% of the credit facilities, that was still not a fixed term of the credit facilities offered by the bank. In addition, there was no ascertainable payable amount until such time the utilised credit facilities are recalled or cancelled. The total amount of the credit facilities could not be construed as a credit facility that provided 'a definite and certain period', as required in item 22(1)(a) of the First Schedule of the Act. The terms of the credit facilities had no characteristic of 'a definite and certain period' and a 'total amount to be ultimately payable can be ascertained'. The latter character hinged on the former character. Therefore, the credit facilities provided in the impugned instrument could not qualify as a loan instrument described in item 22(1)(a) of the First Schedule of the Act. The question posed from the outset *vis-à-vis* whether the impugned instrument could qualify to be an instrument as

described in item 22(1)(b) of the First Schedule of the Act was answered in the affirmative. It then followed that the question whether the remission order applied would become pertinent. (paras 23, 24 & 26)

(2) The burden was on the respondent to satisfy the court that it was entitled to rely on the remission order. In order to qualify to enjoy the benefit of the remission order, there were four conditions: (i) the stamp duty was chargeable under item 22(1)(b) of the First Schedule of the Act; (ii) it must be a loan agreement or loan instrument; (iii) the entire loan sum or credit facility was not secured with any security; and (iv) the sum(s) or money owing was repayable on demand or in single bullet repayment. 'Single bullet payment' simply meant a lump sum payment made for the entirety of an outstanding loan amount. The impugned instrument had satisfied the requirements to be an instrument within the envisaged meaning of item 22(1)(b) of the First Schedule of the Act. The impugned instrument was a loan agreement or loan instrument. The parties agreed that the various credit facilities were offered without the need to pledge any security; it was on a 'clean basis'. Thus far, the respondent had satisfied the first three conditions. As for the last condition, the bank had reserved its right to recall or cancel the facility or any part thereof at any time it deemed fit without even assigning any reason thereto, and upon doing so, the whole indebtedness or such part thereof shall be repayable on demand. The right of 'repayable on demand' had been expressly stipulated in the specific conditions for the trade facilities as well as in the Forex facility. Hence, the last condition of the remission order had been fulfilled. The respondent was entitled to enjoy and rely on the benefit of the remission order. (paras 28-30 & 35)

(3) The respondent had paid a total stamp duty of RM525,000. Therefore, the correct amount to be refunded after having taken into consideration the proper amount of stamp duty to be paid, *ie*, RM1,050, was RM523,950 (RM525,000 less RM1,050) as the excess amount. The High Court had incorrectly ordered the sum of RM420,000 as the excess amount to be refunded. However, since there was no cross-appeal filed by the respondent on this error, the order granted by the HCJ in relation to the amount to be refunded was not disturbed and shall be maintained. (paras 48-49 & 53)

(4) The following orders were made, *inter alia*, (i) the High Court order, granting accrued chargeable interest at the rate of 8% on the sum of RM420,000 shall be set aside; (ii) the applicable stamp duty chargeable (payable) on the impugned instrument executed between the respondent and the bank was a sum of RM1,050,000; and (iii) the remaining orders in the High Court order shall be upheld and maintained, and the said High Court order shall be amended accordingly to reflect the decision of this court. (para 52)

A **Case(s) referred to:**
Ann Joo Integrated Steel Sdn Bhd v. Pemungut Duti Setem [2022] 10 CLJ 722 HC ***(refd)***
Littman v. Baron [1951] 2 All ER 393 ***(refd)***
Pemungut Duti Setem v. BASF Services (Malaysia) Sdn Bhd [2010] 4 CLJ 556 CA ***(refd)***
UMBC v. Pekeliling Triangle Sdn Bhd [1991] 2 CLJ 1470; [1991] 1 CLJ (Rep) 474 SC ***(refd)***

B **Legislation referred to:**
Civil Law Act 1956, s. 11
Finance Act 2018, s. 68
Stamp Act 1949, ss. 38A(5), 39(1), 80(2), First Schedule items 22(1)(a), (1)(b), 27(a)(iii)

C *For the appellant - Normareza Mat Rejab, Syazana Safiah Rozman, Mohammad Hafidz Ahmad & Muhammad Danial Izzat; Senior State Counsel*
For the respondent - S Saravana Kumar & Nur Hanina Mohd Azham; M/s Rosli Dahlan Saravana Partnership

[Editor's note: For the High Court judgment, please see Ann Joo Integrated Steel Sdn Bhd v. Pemungut Duti Setem [2022] 10 CLJ 722 (overruled in part).]

D *Reported by Najib Tamby*

JUDGMENT

E **Choo Kah Sing JCA:**

Introduction

[1] The respondent filed an appeal to the High Court by way of case stated pursuant to s. 39(1) of the Stamp Act 1949 (Revised 1989) (hereafter "the Act"). The respondent's appeal was against the appellant's decision made on
F 8 March 2021 (pursuant to s. 38A(5) of the Act) in that the appellant had rejected the respondent's notice of objection dated 16 November 2020 which was in response to a notice of assessment of stamp duty dated 13 February 2019 (hereafter "the notice of assessment") issued by the appellant.

G **[2]** On 30 March 2022, the learned High Court Judge allowed the respondent's appeal. Consequently, the appellant's notice of assessment was set aside.

[3] Dissatisfied with the decision of the learned High Court Judge, the appellant filed this appeal. For ease of reference, the appellant shall hereafter be referred to as "the Collector".

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(Note: The High Court decision is reported as *Ann Joo Integrated Steel Sdn Bhd v. Pemungut Duti Setem* [2022] 10 CLJ 722).

[4] On 3 July 2024, this court, after having read the written submissions and after having heard the oral submissions from the counsel for the
I respective parties, reserved its decision. We now deliver our decision, and the reasons for the decision are set out below.

Salient Facts

[5] By way of a letter of offer dated 27 December 2018 (hereafter "the impugned instrument") issued by Alliance Bank Malaysia Berhad (hereafter "the bank") to the respondent, the bank agreed to offer various credit facilities to the respondent, and the respondent agreed to accept the offer of the various credit facilities. The various credit facilities comprised various trade facilities up to the limit of RM100,000,000 in the forms of letter of credit, trust receipt, foreign currency trust receipt, bankers acceptance and foreign currency promissory notes (collectively hereafter be referred to as "the trade facilities") and the facility of forward foreign exchange up to the limit of RM5,000,000 (hereafter 'the Forex'). Hence, the total credit facilities offered in the impugned instrument was up to the limit of RM105,000,000 (hereafter "the credit facilities amount").

[6] It is instructive to understand the difference between the terms "amount chargeable for duty" and "amount of stamp duty that is chargeable". The "amount chargeable for duty" means the amount that is to be used for the calculation of the stamp duty to be paid; whereas, the "amount of stamp duty that is chargeable" means the stamp duty payable.

[7] Two things are not in dispute. First, the impugned instrument is an instrument chargeable with duty. Second, the sum of RM105,000,000 (or the credit facilities amount) is the amount chargeable for stamp duty. The heart of the dispute is: What is the amount of stamp duty payable on the amount chargeable for stamp duty?

[8] The respondent asserted that it was entitled to benefit from the Stamp Duty (Remission) (No. 2) Order 2012 (hereafter "the remission order") for a remission of the stamp duty payable under item 22(1)(b) of the First Schedule of the Act. The Collector disagreed with the respondent's assertion. The Collector opined that the amount of stamp duty payable falls under item 22(1)(a), instead of 22(1)(b) of the First Schedule of the Act, and that the stamp duty payable was RM525,000. Further, the Collector disagreed with the respondent that the remission order was applicable to the respondent. As such, the respondent could not rely on the remission order to seek a refund of the stamp duty already paid.

[9] The learned High Court Judge was in favour of the respondent's argument in that the impugned instrument did not qualify to fall within the envisaged meaning as per item 22(1)(a) of the First Schedule of the Act *vis-à-vis* "for a definite and certain period so that the total amount to be ultimately payable can be ascertained". Therefore, the High Court held that the collector's reliance on the stamp duty payable under item 22(1)(a) of the First Schedule of the Act (which refers to the same *ad valorem* duty as a charge or mortgage) was incorrect and wrong in law.

[10] The High Court found that the impugned instrument was qualified to be an instrument that falls within item 22(1)(b) of the First Schedule of the Act. Therefore, it follows that the remission order was applicable to the respondent, and the respondent was entitled to seek for a refund based on the remission order from the amount which it had already paid for the stamp duty.

The Findings Of This Court

Item 22(1)(a) Or (b) Of The First Schedule Of The Act?

[11] The question that was posed to the High Court was: "Whether the letter of offer falls within the remission order. If the answer is yes, the respondent is entitled to a remission of stamp duty that is in excess of 0.1%."

[12] This court opines that the first question that ought to be determined is: whether the impugned instrument could qualify to be an instrument as described in item 22(1)(b) of the First Schedule of the Act? If the answer is in the negative, then it is unnecessary to refer to the remission order. The remission order only applies to an instrument upon which stamp duty is payable under item 22(1)(b) of the First Schedule of the Act. The remission order does not apply to an instrument upon which stamp duty payable under item 22(1)(a) of the First Schedule of the Act.

[13] It is trite law that when dealing with the Act, emphasis must be placed on the instrument concerned, not the transaction in the instrument (see *Pemungut Duti Setem v. BASF Services (Malaysia) Sdn Bhd* [2010] 4 CLJ 556; [2009] 5 MLJ 348).

[14] For ease of reference, item 22(1) of the First Schedule of the Act is reproduced below.

> 22 BOND, COVENANT, LOAN, SERVICES, EQUIPMENT LEASE AGREEMENT OR INSTRUMENT of any kind whatsoever:
>
> (1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security, and except a superannuation annuity), or for any sum or sums of money at stated periods, not being interest for any sum secured by a duly stamped instrument, nor rent reserved by a lease or tack:
>
> | | |
> |---|---|
> | (a) for a definite and certain period so that the total amount to be ultimately payable can be ascertained. | The same ad valorem duty as a charge or mortgage for such total amount. |
> | (b) for the term of life or any other indefinite period: | |
> | for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable | RM1.00 |
>
> [(1) Subs. Act 812: s. 68]

[15] Although the impugned instrument has been referred to as a "letter of offer", in substance, it was a loan instrument or loan agreement (perjanjian pinjaman). In order for the impugned instrument to qualify as an instrument mentioned in item 22(1)(b) of the First Schedule of the Act, the amount chargeable for stamp duty, *ie*, the credit facilities amount (up to the limit of RM105,000,000), has to be "for the term of life or any other indefinite period". In other words, the impugned instrument for the total credit facilities amount (up to the limit of RM105,000,000) in the various credit facilities does not set down the tenure of the loan period nor limit the period of time for the repayment of the credit facilities amount. In short, the various credit facilities amount did not amount to a fixed term loan with a fixed amount of repayment over a fixed period of time.

[16] Counsel for the Collector submitted that the learned High Court Judge "failed to appreciate that the letter of offer clearly stipulates a tenure of up to 180 days for the credit facilities." Further, it was submitted that "the fact that overdue interest may be imposed signifies that the credit facilities were subject to the tenure and due dates as mentioned in the other terms and conditions contained in the attachments to the letter of offer." In other words, counsel for the Collector argued that the various credit facilities stated in the impugned instrument were "for a definite and certain period so that the total amount to be ultimately payable can be ascertained" (see the wordings in item 22(1)(a) of the First Schedule of the Act).

[17] We find counsel for the Collector has misconceived the nature of the various credit facilities and the terms as provided in the impugned instrument.

[18] The phrase "for a definite and certain period so that the total amount to be ultimately payable can be ascertained" stated in item 22(1)(a) of the First Schedule of the Act denotes two things. First, the phrase "for a definite and certain period" refers to a fixed length of time. Second, the phrase "so that the total amount to be ultimately payable can be ascertained" refers to the amount to be paid over the fixed length of time which can be ascertained. The credit facilities amount, *ie*, RM105,000,000, granted in the letter of offer was not for a fixed term neither was it for a definite period or for a certain period.

[19] The specific conditions for the trade facilities in the impugned instrument states as follows:

> (i) Repayment
>
> Notwithstanding any other provisions herein stated related to the availability of the Facility or any part thereof, the Bank reserves the right to recall/cancel the facility or any part thereof at any time it deems fit without assigning any reason thereto by giving written notice of the same, whereupon the facility of such part thereof shall be cancelled and the whole indebtedness or such part thereof be repayable on demand.

A similar term (as above) is found in the part for the Forex facility.

[20] Nowhere in the impugned instrument does it set out a definite and certain period of the repayment of the credit facilities amount. Hence, the offer of the credit facilities amount is open until such time the bank exercises its right to recall or cancel the entire credit facility or any part thereof at any time as it deems fit without assigning any reason thereto. Further, the total amount to be ultimately payable could only be ascertainable upon the bank exercising its right to recall or cancel the credit facilities.

[21] The Collector's counsel submitted that each of the trade facility provided a usance tenure or tenure of "up to 180 days", therefore, there was a definite and certain period provided in the terms of the credit facility. This court could not agree with the submission. The usance tenure or tenure "up to 180 days" denotes the maximum credit period which the respondent could enjoy or benefit from.

[22] The usance tenure (as in the letter of credit facility) refers to the allowable period of time between the date of the bill and its payment; and tenures in other trade facilities are reference to the credit period, and the credit period depends on the request of the respondent, as long as it is not more than 180 days. If the usance tenure or tenure of "up to 180 days" is to be construed as a definite and certain period, then no credit facility could qualify as one for "the term of life or any other indefinite period". In short, the usance tenure or tenure of "up to 180 days" has to mean and to be construed in relation to the limit of the credit period, and is not meant to be "a definite and certain period." In other words, the repayment period is not fixed in that there is no definite and certain period for repayment as opposed to a fixed-term loan with specified or ascertained repayment amount(s) to be paid over a fixed period.

[23] The credit facilities amount was set at a limit up to the amount of RM105,000,000. Although the impugned instrument has allocated a fixed credit amount (loan amount) available for each specific credit facility, that credit amount is not necessarily the loan amount, but a credit limit for which the respondent could utilise up to that specific amount. It is up to the respondent to decide how much and when to take up the available credit amount. Although there is a clause which requires the respondent to maintain a trade utilisation of 70% of the credit facilities, that is still not a fixed term of the credit facilities offered by the bank. In addition, there is no ascertainable payable amount until such time the utilised credit facilities are recalled or cancelled.

[24] Based on the above analysis, the total amount of the credit facilities could not be construed as a credit facility that provides "a definite and certain period" as required in item 22(1)(a) of the First Schedule of the Act. The terms of the credit facilities have no characteristic of "a definite and certain

period" and a "total amount to be ultimately payable can be ascertained". The latter character hinges on the former character. Therefore, the credit facilities provided in the impugned instrument could not qualify as a loan instrument described in item 22(1)(a) of the First Schedule of the Act.

[25] As mentioned above, the credit facilities in the impugned instrument were not for a fixed-term loan and there was no fixed term repayment period, therefore, they fall squarely within the meaning of a loan "for the term of life or any other indefinite period". The credit facilities were for a term of life and have an indefinite period until such time the bank exercises its contractual right to recall or cancel the various credit facilities. Hence, the impugned instrument has satisfied the requirements as set down in item 22(1)(b) of the First Schedule of the Act.

[26] The question posed from the outset *vis-à-vis* whether the impugned instrument could qualify to be an instrument as described in item 22(1)(b) of the First Schedule of the Act is answered in the affirmative. It then follows that the question whether the remission order applies would become pertinent.

The Remission Order

[27] The remission order is reproduced below:

STAMP ACT 1949
STAMP DUTY [REMISSION] [NO. 2] ORDER 2012

IN exercise of the powers conferred by subsection 80(2) of the Stamp Act 1949 [Act 378] the Minister makes the following order:

Citation

1. This order maybe cited as the Stamp Duty (Remission) (No. 2) Order 2012.

Remission

2. The amount of stamp duty that is chargeable under subsubitem 22(1)(b) of the First Schedule to the Act upon a loan agreement or loan instrument without security for any sum or sums of money repayable on demand or in single bullet repayment under that subsubitem which is in excess of zero point one per cent (0.1%) is remitted.

Made 25 July 2012
[CR(8.09)248/39/7-217 JLD.7(SK.9); PN(PU2)159/XXXVI)

[28] The burden is on the respondent to satisfy the court that it is entitled to rely on the remission order (see *Littman v. Baron* [1951] 2 All ER 393 as cited by the Collector's counsel).

[29] In order to qualify to enjoy the benefit of the remission order, there are four conditions. First, the stamp duty is chargeable under item 22(1)(b) of the First Schedule of the Act. Secondly, it must be a loan agreement or loan instrument. Thirdly, the entire loan sum or credit facility is not secured with any security, and lastly, the sum(s) or money owing is repayable on demand or in a single bullet repayment. "Single bullet payment" simply means a lump sum payment made for the entirety of an outstanding loan amount.

[30] As elucidated above, the impugned instrument has satisfied the requirements to be an instrument within the envisaged meaning of item 22(1)(b) of the First Schedule of the Act. The impugned instrument is a loan agreement or loan instrument. The parties agreed that the various credit facilities were offered without the need to pledge any security, it was on a "clean basis". Thus far, the respondent has satisfied the first three conditions.

[31] With regard to the last condition, counsel for the Collector submitted that it is only when the bank exercises its right to recall or cancel the various credit facilities that the respondent is required to repay the sum(s) owing on demand or in single bullet repayment. In other words, counsel for the Collector takes the position that the remission order only applies when any outstanding sum owing to the bank is repayable on demand. If the respondent is required to pay (whatever the amount is) even if no demand has been made by the bank, then the remission order could not be applicable. Counsel for the Collector submitted that "there is no provision in the letter of offer that the respondent does not need to pay the loan unless and until it is demanded by the bank. This being the case, the letter of offer is not an instrument that falls under the remission order." On that score, the impugned instrument could not be qualified to enjoy the benefit of the remission order, counsel for the Collector submitted.

[32] The phrase "any sum or sums of money repayable on demand or in single bullet repayment" has to be understood in this manner. The phrase "sum or sums of moneys" refers to the outstanding loan amount. The word "repayable" simply means to pay back (to the bank). There are two situations in which the outstanding loan amount could be paid back to the bank. First, when the bank requests the outstanding loan amount to be paid back *vis-à-vis* the bank demands for the outstanding loan amount to be paid back, in other words, repayable on demand. Second, the outstanding loan amount is repayable in a lump sum payment *vis-à-vis* the outstanding loan amount is repayable in a single bullet payment. In this second situation, the bank does not need to demand for the repayment, rather, the manner in which the loan amount is repayable has been spelt out as a term of the repayment of the loan sum. This interpretation of the two situations is resonant with the word "or" is being used in the phrase, *ie*, repayable on demand or in a single bullet repayment.

[33] This court finds the interpretation adopted by counsel for the Collector is not reasonable. All loans from any financial institutions are required to be repaid whether by staggered payment (by installment with a specific fixed amount) or flexi-payment (without a specific fixed amount). No financial institution would offer a loan without any repayment term or provide that repayment is only required when the financial institution demands for it, as suggested by counsel for the Collector.

[34] The various credit facilities provided by the bank are in the form of credit in nature in the sense that the funds (moneys) are readily available for the respondent to draw down at any time as it pleases or requires as opposed to a conventional loan in that the loan amount is disbursed in full (immediate or at a certain fixed time). The respondent has a flexi-repayment of any funds which have been drawn down, and the repayment amount (the principal and chargeable interest) depends on the terms of the credit facility that was offered. To suggest the requirement that the respondent has to prove that it need not pay unless there is a demand made by the bank is against any financial or commercial sense. The respondent still has to pay even if there is no demand made against it by the bank. How much and when to pay depends on the respondent's financial commitment at that material time. The lesser the amount and the longer the time of the repayment means the more chargeable interest will be imposed on the outstanding amount. Hence, this court is of the firm view that the interpretation taken by counsel for the Collector could not be what the Minister had in mind when he exercised his power conferred by sub-s. 80(2) of the Act in making the remission order.

[35] Based on the above analysis, *a fortiori*, the phrase "repayable on demand" has to refer to circumstances where the terms of the loan instrument have provided the lender (the bank) the contractual right to demand the full outstanding sum to be repaid immediately even when there is no express term that the borrower has to pay the outstanding sum (or in part). In the present case, the bank has reserved its right to recall or cancel the facility or any part thereof at any time it deems fit without even assigning any reason thereto, and upon doing so, the whole indebtedness or such part thereof shall be repayable on demand. The right of "repayable on demand" has been expressly stipulated in the specific conditions for the trade facilities as well as in the Forex facility. Hence, this court is of the considered view that the last condition of the remission order has been fulfilled, and that the respondent is entitled to enjoy and rely on the benefit of the remission order.

The Amount Entitled To Be Refunded Under The Remission Order

[36] The stamp duty that the respondent had paid was based on the assessment notice dated 13 February 2019 in which the stamp duty payable was stated to be the sum of RM525,000. Below is the tabulation of the amount of the stamp duty payable:

RM105,000,000 x 0.5% (for each RM1,000 the stamp duty payable is RM5 or 5/1000 x 100%) = RM525,000

[37] The stamp duty payable (according to the Collector's case) was based on item 27(a)(iii) of the First Schedule of the Act. This is because the Collector had referred to item 22(1)(a) of the First Schedule of the Act as the appropriate reference to the stamp duty payable which referred to the same *ad valorem* duty as a charge or mortgage instrument as per item 27 of the First Schedule of the Act. As the impugned instrument could not fit into any of the specific instruments mentioned in item 27, therefore, item 27(a)(iii) would be the appropriate reference *vis-à-vis* in any other case – for each RM1,000 or part thereof the stamp duty payable is RM5 (which also means 0.5% of the amount chargeable for stamp duty).

[38] The respondent submitted that the reliance on item 22(1)(a) of the First Schedule of the Act by the collector for the tabulation of the stamp duty payable was incorrect. The respondent submitted that since it was entitled to rely on the remission order, after having satisfied the court that item 22(1)(b) of the First Schedule of the Act is the appropriate provision, therefore, the impugned instrument should be stamped at the rate of 0.1% of the amount chargeable for stamp duty *vis-à-vis* the amount of stamp duty payable is 0.1% of the amount of RM105,000,000. Therefore, the amount of the stamp duty payable ought to be the sum of RM105,000, the respondent counsel submitted. The tabulation for the stamp duty payable (according to the respondent's counsel) is as below:

RM105,000,000 x 0.1% = RM105,000

[39] The respondent sought for a refund of RM420,000 (RM525,000 - RM105,000). The learned High Court Judge then made the following relevant orders:

> (3) A Declaration that the applicable stamp duty chargeable upon the letter of offer dated 27.12.2018 executed between the Plaintiff (the respondent) and Alliance Bank Malaysia Berhad amounts to RM105,000.00;
>
> ...
>
> (7) An Order that RM420,000.00 being the excess stamp duty which has been paid to the Respondent (the collector) as a result of the erroneous Assessment shall be refunded to the Plaintiff (the respondent) within 14 days from the date this Order is granted by this Honorable Court with interest accruing at the rate of 8% on the said sum from the date the payment was made to the Respondent (the collector);

[40] This court finds the respondent's counsel's submission that the impugned instrument should be stamped at the rate of 0.1 % of the amount chargeable for stamp duty which amounted to RM105,000 is incorrect in law.

[41] As explained earlier, the terms "amount chargeable for duty" and "amount of stamp duty that is chargeable" have different connotations. The "amount chargeable for duty" means the amount that is to be used for the calculation of the stamp duty payable; whereas, the "amount of stamp duty that is chargeable" means the stamp duty payable.

[42] The court must read the wording in the remission order in its plain, literal and natural meaning (see *UMBC v. Pekeliling Triangle Sdn Bhd* [1991] 2 CLJ 1470; [1991] 1 CLJ (Rep) 474; [1991] 2 MLJ 559).

[43] The remission order begins with the phrase "the amount of stamp duty that is chargeable", therefore, it refers to the stamp duty payable. It does not refer to the amount chargeable for duty. The Malay language version of the remission order begins with "amaun duti setem yang boleh dikenakan" which simply means the amount of stamp duty that is chargeable or payable. In essence, the remission order could be read as "The amount of stamp duty that is chargeable under sub-subitem 22(1)(b) of the First Schedule to the Act ... which is in excess of zero point one per cent (0.1%) is remitted."

[44] The stamp duty payable in item 22(1)(b) of the First Schedule of the Act refers to "for every RM100 and also for any fractional part of RM100 of the annuity or sum periodically payable" shall be RM1 (as stated in the last column "proper stamp duty"). In other words, the stamp duty payable for every RM100 is RM1, which translates to 1% of every RM100 or any part thereof. Therefore, in the present case, if the stamp duty payable is based on item 22(1)(b) of the First Schedule of the Act, then the stamp duty payable would be in the sum of RM1,050,000 (RM105,000,000 x 1%).

[45] Based on the above, if the amount of stamp duty payable is RM1,050,000, then any amount in excess of 0.1% of the stamp duty payable shall be remitted.

[46] It is incorrect to take 0.1% (as stated in the remission order) as the stamp duty payable. The "0.1%" stated in the remission order is in reference to the stamp duty which has to be paid in accordance with item 22(1)(b) of the First Schedule of the Act in which the stamp duty payable is 1% of the amount chargeable for stamp duty. The amount chargeable for stamp duty is RM105,000,000.

[47] Below is the correct tabulation of the stamp duty payable based on item 22(1)(b) of the First Schedule of the Act and the application of the remission order.

The amount chargeable for duty	RM105,000,000.00
The proper stamp duty that is chargeable (or payable) based on item 22(1)(b) of the First Schedule of the Act - for every RM100.00 and also for any fractional part of RM100.00 of the annuity or sum periodically payable is RM1.00	1%
The stamp duty payable based on item 22(1)(b) of the First Schedule of the Act	RM1,050,000.00
The amount of stamp duty that is chargeable which in excess of 0.1% is remitted (the amount to be remitted if it is based on the above tabulation)	RM1,048,950.00
Therefore, the stamp duty payable (after remission) is:	RM1,050.00

[48] The respondent had paid a total stamp duty of RM525,000, therefore, the correct amount to be refunded after having taken into consideration the proper amount of stamp duty to be paid, *ie*, RM1,050, is RM523,950 (RM525,000 less RM1,050) as the excess amount. The High Court had incorrectly ordered the sum of RM420,000 as the excess amount to be refunded.

[49] However, since there is no cross-appeal filed by the respondent on this error, this court will not disturb the order granted by the learned High Court Judge in relation to the amount to be refunded.

Other Issues

[50] Although the Collector's counsel in the submission has raised the issue of whether the amendment to item 22 (see Finance Act 2018 (Act 812); s. 68) applies to the respondent's case, this issue is no longer relevant, as the respondent's counsel did not challenge that the new amendment applied to the respondent's case. Further, as rightly submitted by the Collector's counsel, the impugned instrument was brought for adjudication on 31 January 2019, which was after the amendment of the law had come into force on 28 December 2018.

[51] With regard to the High Court's order ordering 8% interest on the sum of RM420,000 to be calculated from the date the payment was made to the Collector until the said sum is refunded to the respondent, this court is troubled by this order. As rightly submitted by the Collector's counsel, the respondent's case was a stamp duty appeal under s. 39(1) of the Act. The appeal at the High Court below was not a suit brought before the court for recovery of any debt or damages in which a court could give interest at such rate as it thinks fit on the whole or any part of the debt or damages

(see s. 11 of the Civil Law Act 1956). This objection raised by the Collector's counsel ought to be allowed. Therefore, the High Court order dated 30 March 2022 in granting accrued interest of 8% on the sum of RM420,000 ought to be set aside and amended accordingly.

Conclusion

[52] For the above reasons, this court, in a unanimous decision, allows the appeal in part and makes the following orders:

(i) the High Court order dated 30 March 2022 granting accrued chargeable interest at the rate of 8% on the sum of RM420,000 shall be set aside;

(ii) the applicable stamp duty chargeable (payable) on the impugned instrument (or letter of offer dated 27 December 2018) executed between the respondent and the bank (Alliance Bank Malaysia Berhad) is a sum of RM1,050,000;

(iii) the remaining orders in the High Court order dated 30 March 2022 shall be upheld and maintained, and the said High Court order shall be amended accordingly to reflect the decision of this court; and

(iv) no order as to costs.

[53] On a final note, since there is no cross-appeal by the respondent for the correct amount to be refunded, therefore, the sum of RM420,000 as ordered to be refunded to the respondent by the appellant by the High Court order dated 30 March 2022 shall be maintained.